



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

40335

B-180161

January 8, 1974

The Honorable Donald E. Johnson  
Administrator, Veterans Administration

Dear Mr. Johnson:

We refer to your letter dated November 26, 1973, with enclosures, requesting our opinion as to whether the Military Personnel and Civilian Employees' Claim Act of 1964, Pub. L. 88-558, as amended, 31 U.S.C. 240-243, authorizes the Veterans Administration (VA) to expend appropriated funds to reimburse an employee for the loss of personal property incident to his Government service.

The facts and circumstances giving rise to Mr. Herz's claim as disclosed by the record are set forth below:

In December 1972, Mr. Marcus Herz, an employee of the Veterans Administration, was transferred at Government expense from the VA Hospital in Oklahoma City, Oklahoma, to the VA Hospital in San Francisco, California. His household goods and personal effects were moved in a rented U-Haul trailer which has been previously approved by the VA as the most economical and convenient means of travel for himself and the Government. On December 6, 1972, Mr. Herz entered temporary living quarters at VA expense in a motel nearby the hospital. After investigating the availability of suitable storage facilities for the loaded trailer, arrangements were made to store the trailer in the garage at the motel. The trailer and its contents remained in this garage until the morning of December 14, 1972, at which time it was found missing. On December 18, 1972, Mr. Herz filed a claim for reimbursement under the authority of the aforementioned statute (31 U.S.C. 240-243). The claim was denied (July 25, 1973) by the VA Office of General Counsel, on the grounds that Mr. Herz failed to establish that his loss was not caused wholly or partly by his own negligence, as required by the VA regulation then in effect.

Mr. Herz has requested that you reconsider his claim and you ask to be advised whether your agency has authority to reimburse an employee for personal property which has been lost or stolen while being moved and stored under the described circumstances. If such question is answered in the affirmative, you ask the further question whether or not the claimant took adequate precautions to safeguard his property.

[Use of Appropriated Funds To Pay for Personal  
Property Loss]

~~716468~~

091975

B-180161

Section 3(a) of the Military Personnel and Civilian Employees' Claims Act of 1964, Pub. L. 88-558, approved August 31, 1964, 78 Stat. 767, as amended by section 3(b) of Pub. L. 89-185, approved September 15, 1965, 79 Stat. 789, 31 U.S.C. 241(b), authorizes the head of an agency (or his designee) under such regulations as he (the agency head) may prescribe, to settle and pay claims by an employee of that agency for damage to, or loss of, personal property incident to his service. Section 4 of the act, 31 U.S.C. 242 provides that notwithstanding any other provision of law the settlement of a claim thereunder is final and conclusive.

With respect to whether the claimed loss was incurred incident to service, a review of the legislative history of Pub. L. 88-558, as amended, fails to reveal a specific reference to the types of claims contemplated by the legislation. B-169236, April 21, 1970. It would appear, however, that where the transfer of duty station is made at Government expense, any loss of personal property occurring as a result of such transfer, without negligence on the part of the employee (as required by the law and VA Regulations), properly might be considered as being a loss incurred incidental to his service.

In view of the provisions of Pub. L. 88-558 which make agency settlements thereunder final and conclusive, it is not within the jurisdiction of our Office to review claims for damages to, or loss of, personal property by Federal employees. See B-163742, December 14, 1972. We might state, however, that the conclusion administratively reached on Mr. Marx's claim appears to us to be reasonable under the circumstances. In any event, the claim cannot be paid unless it is administratively determined that the loss "was not caused wholly or partly by the negligent or wrongful act of the claimant, his agent, or his employee," as provided in the cited act.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General  
of the United States